

Bureau of Indian Affairs, Interior

§ 67.11

grant an applicant additional time, not to exceed 30 days, in which to submit a request for a change in election.

(2) A change in the election of whether to share in the per capita payment can only be made by competent adult applicants; by the legal guardian of an incompetent adult; or, in the case of a minor, by the minor's parent or legal guardian.

(c) If the Superintendent determines that an applicant is not eligible for enrollment as an Independent Seminole Indian of Florida, the Superintendent shall notify the applicant of the decision and shall fully explain the reasons for the adverse action and explain the rejected applicant's right to appeal to the Area Director. The decision of the Area Director shall be final and conclusive.

(d) Except as provided in paragraph (a)(2) of this section, a notice of adverse action concerning an individual's enrollment eligibility or the inclusion or exclusion of an individual's name on the per capita payment roll is considered to have been made, and computation of the period for appeal shall begin on the earliest of the following dates:

- (1) Delivery date indicated on the return receipt;
- (2) Date of acknowledgment of receipt;
- (3) Date of personal delivery; or
- (4) Date of return by the post office of an undelivered certified or registered letter.

(e) To avoid hardship or gross injustice, the Area Director or the Superintendent may waive technical deficiencies in application forms or other submittals. Failure to file by the deadline date does not constitute a technical deficiency.

§ 67.10 Appeals.

(a) Appeals from or on behalf of applicants who have been rejected for enrollment must be in writing and must be filed pursuant to part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal.

(b) A copy of part 62 of this chapter shall be furnished with each notice of adverse action. All sections of part 62 shall be applicable to appeals filed

under this part except §§ 62.10, 62.11 and 62.12.

§ 67.11 Decision of the Area Director on appeals.

(a) The Area Director will consider the record as presented, together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(b) The decision of the Area Director on an appeal shall be final and conclusive, and written notice, which shall state that the decision is final and conclusive, shall be given to the individual applicant, parent, legal guardian, or sponsor, as applicable.

(c) If an individual files an appeal on behalf of more than one applicant, one notice of the Area Director's decision may be addressed to the person who filed the appeal. The Area Director's decision must list the name of each person to whom the decision is applicable. Where an individual applicant is represented by a sponsor, notification to the sponsor of the Area Director's decision is sufficient.

(d) Written notice of the Area Director's decision on the appeal shall be sent to the applicant by certified mail, to be received by the addressee only, return receipt requested.

(1) On the basis of the individual's election with regard to whether he or she wishes to share in the per capita payment, the Area Director's decision shall also state whether the individual's name will be included on the per capita payment roll. If no election is made by the individual applicant, parent, or legal guardian, the individual's name will not be included on the per capita payment roll.

(2) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in the per capita payment. Computation of the 30-day period will be in accordance with § 67.9(a)(2) and § 67.9(d). Upon written request received within the 30-day period, to avoid hardship or gross injustice, the Area Director may grant additional time, not to exceed 30 days, in which to submit a request for a change in election.

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(3) The change in the election of whether to share in the per capita payment can only be made by adult applicants, or by the legal guardian of an incompetent adult, or in the case of minors, by the parents or legal guardian of such minors.

§ 67.12 Exhaustion of administrative remedies.

The decision of the Area Director on appeal, which shall be final for the Department, is subject to judicial review under 5 U.S.C. 704.

§ 67.13 Preparation, certification and approval of the roll.

(a) The Superintendent shall prepare a minimum of three (3) copies of the roll of those persons determined to be qualified for enrollment as an Independent Seminole Indian of Florida. The roll shall contain for each person a roll number or identification number, name, address, sex, date of birth, date of death (when applicable), and the name and relationship of the ancestor on the annotated Seminole Agency Census of 1957 through whom eligibility for enrollment was established.

(b) A certificate shall be attached to the roll by the Superintendent certifying that to the best of his or her knowledge and belief, the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Area Director shall approve the roll.

§ 67.14 Preparation of a per capita payment roll.

(a) The Superintendent shall, based on the roll approved under § 67.12(c), prepare a per capita payment roll. The payment roll shall be comprised of those persons whose names appear on the approved roll and who have elected to share in the per capita payment.

(b) The per capita payment roll shall contain for each person a roll number or identification number, name, and address.

(c) The Area Director shall authorize the distribution of the judgment funds to those persons named on the per capita payment roll.

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§ 67.15 Special instructions.

To facilitate the work of the Superintendent and Area Director, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part.

PART 75—REVISION OF THE MEMBERSHIP ROLL OF THE EASTERN BAND OF CHEROKEE INDIANS, NORTH CAROLINA

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AUTHORITY: Sec. 2, 71 Stat. 374.

SOURCE: 24 FR 201, Jan. 8, 1959, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 75.1 Definitions.

As used in this part:

(a) *Band* means the Eastern Band of Cherokee Indians in North Carolina.

(b) *Reservation* means the lands of the Eastern Band of Cherokee Indians in the counties of Jackson, Swain, Graham, Cherokee and Haywood in North Carolina.

(c) *Tribal Council* means the Tribal Council of the Eastern Band of Cherokee Indians in North Carolina.

(d) *Announcement* means the announcement of the revision of the membership roll issued as required in § 75.3.

(e) *Tribal Enrollment Office* means the Tribal Enrollment Clerk working in